



**Corporate  
Professionals**

# **RECENT CHANGES IN INDIAN STAMP ACT**

**LEVY & COLLECTION OF STAMP DUTY ON ISSUE/SALE/TRANSFER  
OF SECURITIES**

# BACKGROUND



The Finance Act, 2019 enumerates certain amendments to the Indian Stamp Act, 1899. The Finance Act came into effect on 1<sup>st</sup> day of April, 2019 but the amendments to the Indian Stamp Act as mentioned in Part I of Chapter IV of the Finance Act were not notified until December 10, 2019.

On December 10, 2019, Ministry of Finance (MoF) vide notification dated appointed January 09, 2020, as the date on which the provisions of said chapter shall come into force. However, MoF vide notification dated January 08, 2020 has deferred the effective date of amendments in Indian Stamp Act, 1899 to **April 01, 2020**.

The objective is to introduce uniform rate and streamline the process of levying and collection of Stamp Duty on the Instruments related to issue or transfer of securities through common agencies i.e. Stock Exchanges or Clearing Corporations or Depositories, as the case may be.



# KEY TERMS INTRODUCED/AMENDED

## Amended Definition

Widened the existing definition of 'instrument' by including in its ambit, a document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

## New Definition

"Securities" as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956

"Derivative" as defined in section 45U(a) of the Reserve Bank of India Act, 1934

Certificate of deposit, commercial usance bill, commercial paper, repo on corporate bonds and such other debt instrument of original or initial maturity upto one year as the Reserve Bank of India may specify from time to time



# KEY TERMS INTRODUCED

## DEBENTURE

- Debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not
- Bonds in the nature of debenture issued by any incorporated company or body corporate
- Certificate of deposit, commercial usance bill, commercial paper and such other debt instrument of original or initial maturity upto one year as the Reserve Bank of India may specify from time to time;
- Securitised debt instruments

**In case of listed securities traded in a stock exchange** - the price at which it is so traded.

**In case security transferred through a depository but not traded in the stock exchange (off market transaction)–** price/consideration mentioned in instrument

**In case of unlisted securities –** price/consideration mentioned in instrument

## MARKET VALUE



# STAMP DUTY ON TRANSFER OF SECURITIES IN DEMAT/ELECTRONIC FORM

Earlier, the transfer of securities in demat was not subject to any stamp duty.

The Finance Act, seeks to end the relaxations given to such transfer and has provided for levy and collection of stamp duty on transfer of securities in demat or electronic form.

The amendment seeks to end the biggest benefit available on dematerialization of any security.



## STAMP RULES NOTIFIED



MoF vide notification dated December 10, 2019 notified Indian Stamp (Collection of Stamp Duty through Stock Exchanges, Clearing Corporation and Depositories) Rules, 2019.

The Rules provide the manner in which stamp duty shall be levied and collected by Collecting Agent and then transferred to the concerned state governments.

The Rules are now effective from April 01, 2020.



# **LEVY & COLLECTION OF STAMP DUTY IN CASE OF ISSUANCE, SALE AND TRANSFER OF SECURITIES**

## A. SALE AND TRANSFER OF SECURITIES



Nature of transaction	Collector of stamp duty	Duty by whom payable	Duty payable on	Time
Sale of security through stock exchanges	Stock Exchange or Clearing Corporation authorized by it	Buyer	Price at which it is so traded	Settlement of transactions
Transfer of security through a depository	Depository	Transferor	Consideration specified in the instrument	Before executing transfer
Transfer of security otherwise than through a stock exchange/ depository	No clarity	Transferor	Consideration specified in the instrument	Before executing transfer



## B. ISSUE OF SECURITIES



Nature of transaction	Collector of stamp duty	Duty by whom payable	Duty payable on	Time
Issue of security through a stock exchange/ depository or otherwise	Depository	Issuer	Consideration or Issue Price	At the time of issue or change in the records of depository
Issue of security otherwise than through a stock exchange/ depository	No clarity*	Issuer	Consideration specified in the instrument	At the time of issue of securities

*\*Currently, the SDM or other authorities collect Stamp Duty in different parts of the Country*

**Note:** In case of issuance of any securities other than through stock exchange or depository, the stamp duty shall be paid by the issuer in the State where its **registered office is located**.

## C. OFFER FOR SALE, PRIVATE PLACEMENT, TENDER OFFER OR OPEN OFFER



Nature of transaction	Collector of stamp duty	Duty by whom payable	Duty payable on	Time
Offer for sale, private placement, tender offer or open offer through stock exchange	Stock Exchange or Clearing Corporation authorized by it	Offeror	Offer price	Once offer is completed
Offer for sale, private placement, tender offer or open offer through Depository	Depository	Offeror	Offer price	Once offer is completed

## KEY CHANGES IN RATES (SCHEDULE-I)



Particulars	New rates	Existing rates
Issue of security (other than debenture)	0.005%	Different states have prescribed different rates
Issue of listed debentures	0.005%	0.05% per year of the face value of the debenture, subject to the maximum of 0.25% or rupees twenty-five lakhs whichever is lower
Issue of unlisted debenture	0.005%	Not subject to stamp duty
Transfer of security other than debenture on delivery basis	0.015%	0.25 %
Transfer of security other than debenture on non-delivery basis	0.003%	Not subject to stamp duty
Transfer and re-issue of debentures	0.0001%	One-half of the duty payable on a conveyance for a consideration equal to the face amount of the debentures
Government securities	0%	Not subject to stamp duty
Repo on corporate bonds	0.00001%	Not subject to stamp duty



## KEY CHANGES IN RATES (SCHEDULE-I)

Particulars	New rates	Existing rates
<b>Derivatives-</b>		
Futures (equity and commodity)	0.002%	Not subject to stamp duty
Options (equity and commodity)	0.003%	Not subject to stamp duty
Currency and interest rate derivatives	0.0001%	Not subject to stamp duty
Other derivatives	0.002%	Not subject to stamp duty

# MANNER OF COLLECTION OF STAMP DUTY



**Issuer/ Buyer/  
Transferor/Offeror**



**Collecting Agents**

**Transfer within three weeks of the end of each month**



**State Governments**

# RESPONSIBILITY OF COLLECTING AGENTS



## Transfer of Stamp Duty to State Governments

- ✍ The Collecting Agent, transfer the stamp-duty to the State Government where the **residence of the buyer is located.**
- ✍ in case the buyer is located outside India, to the State Government having the **registered office of the trading member or broker of such buyer.**
- ✍ in case where there is no such trading member of the buyer, to the State Government having **the registered office of the participant.**

## Filing a return to the Stock Exchanges

The Collecting Agent shall file a monthly return to the Concerned State Government mentioning all the information related to stamp duty collected, details of transfer of stamp duty, details of defaulters.

# ELIGIBLE STATE GOVERNMENT TO RECEIVE THE STAMP DUTY



The term 'domicile state' is used for the purpose of transferring the stamp duty to the concerned state which shall mean:

- ✍ State of the buyer appearing as 'Permanent address' in India in the records of the Collecting Agent and if the same is not available, then the 'Correspondence address' in India.
- ✍ In the absence of both the addresses in India, the concerned State eligible for the Stamp Duty shall be the State where the registered office of the Intermediary is located (i.e. Broker, Clearing Member, Depository, Custodian, etc. through which trade is executed).

# PENALTY FOR FAILURE TO COMPLY WITH THE PROVISIONS



- ✍ **Any person who fails to collect or transfer the stamp duty to the State Governments** - At least INR 1 lakh which may extend upto 1% of the collection/transfer so defaulted.
- ✍ **Any person who fails to submit the details of transactions to the Government or submits a documents/makes a declaration which is false or which such person knows or believes to be false** – INR 1 lakh for each day during which such failure continues or 1 crore, whichever is less.



## KEY ISSUES



- ✍ In case of issuance of securities, the power to fix the rate of stamp duty falls under List II of the Constitution of India and on which the state governments are only empowered to legislate.
- ✍ However, the Central Government has fixed the rates of stamp duty in exercise of powers under Entry 91 of the List I and Entry 44 of List III of the Constitution of India.
- ✍ Now, it is important to bring the State Governments on board with respect to stamp duty rates on issuance of securities.

# THANK YOU

**Nitesh Latwal**

Senior Associate

Corporate Professionals

E : nitesh@indiacp.com

M : +91 8750142020

Follow Us

